IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

RP.No. 1062 of 2007

(*AGAINST THE ORDERS IN RP.985/2007 DATED 18.10.2007 AND IN W.A.NO.1942 OF 2007 DATED 17th AUGUST, 2007.)*

REVIEW PETITIONER/2ND RESPONDENT/2ND RESPONDENT:

THE MANAGER,
M/S. MIRAJ MARKETING CO. PRIVATE LIMITED,
ARCHITECTS,
CHAMBER, 39/3507,
OFF M.G. ROAD,
RAVIPURAM,
COCHIN-682016.

BY ADV. SHRI P.F. THOMAS (SR.)
ADV. SRI.C.ANIL KUMAR

RESPONDENTS/PETITIONER & R1 IN R.P.985 OF 2007/
PETITIONER & R1 IN W.A.:
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1. P.K. CHANDRAMOHAN,
KARTHIKA,
HOUSE NO.EWS 806,
GANDHI NAGAR,
COCHIN.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
LABOUR & REHABILITATION (A) DEPARTMENT,
TRIVANDRUM.

R1 BY ADV. SHRI PAULSON C. VARGHESE.
R2 BY SR. GOVERNMENT PLEADER SMT. K. MEERA.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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R.P. No. 1062 OF 2007 IN R.P.NO. 985 OF 2007

IN W.A.NO. 1942 OF 2007

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Dated this the 31st October, 2007

O R D E R

H.L. Dattu, C.J.:

M/s. Miraj Marketing Co. Private Limited ('Company' for short) is a company incorporated under the provisions of the Companies Act. They are the employers of one Shri P.K. Chandramohan.

2. There was a dispute between Shri Chandramohan and M/s. Miraj Marketing Co. Private Limited (employer). The parties were before the Conciliation Officer. The conciliation failed. Thereafter, the Conciliation Officer had placed the report before the State Government. The State Government, after considering the report of the Conciliation Officer, refused to make a reference to the Labour Court for adjudication of the lis between Shri Chandramohan and the employer, by its order dated 21.03.1997.

3. Aggrieved by the refusal order passed by the State Government to make the reference, Shri Chandramohan (employee) was before this Court in O.P.No. 15012 of 1998. For the reasons best known to him, the learned counsel for the second respondent/employer was not present before the Court, when the Original Petition had come up for hearing. The learned single

Judge, by order dated 24.09.2002, had allowed the Original Petition and has further directed the State Government to refer the dispute for adjudication before the Labour Court.

4. Pursuant to the directions so issued, the State Government, by its order dated 16.12.2002, had made a reference to the Labour Court to decide the points of dispute between the employer and employee. The respondent's counsel/employer, coming to know of the orders passed by this court on 24.09.2002, had made an application before this Court for re-calling the orders passed on 24.09.2002. The said application was seriously opposed by the learned counsel appearing for the employee.

5. The learned single Judge, after hearing the matter, has allowed the application and thereafter has considered the Original Petition on merits. The learned single Judge by its order dated 27.04.2007 has rejected the Original Petition.

6. During the pendency of the application filed by the employer before this Court, the Labour Court did not proceed with the dispute between the employer and the employee that was referred to it by the State Government. The employee, thereafter filed a Writ Appeal before this Court, in number 1942 of 2007. This Court, by its order dated 17th August, 2007, on the submissions made by the learned counsel for the employee was pleased to dispose of the Writ Appeal . In the said order, the Court was pleased to observe as under:

"We are informed that during the pendency of the Original

Petition before this Court, the State Government had already referred the lis between the parties to the Labour Court for adjudication.

3. In view of the pendency of the dispute before the Labour Court, in our opinion, nothing survives for consideration by this Court.

Accordingly, the Writ Appeal is disposed of, as having become unnecessary."

7. After disposal of the Writ Appeal, the employee filed a Review Petition before this Court, in number 985 of 2007. The said Review Petition also came to be disposed of, by order dated 18th October, 2007. In the said order, the Court was pleased to state as under:

"We do not see any good grounds to interfere with the earlier order passed by us. Therefore, the Review Petition requires to be rejected and it is rejected.

2. The Labour Court shall decide the reference referred to it by the State Government, without being influenced by any one of the observations made by any one of the Courts. ".

8. Now, a Review Petition is filed by the Management/employer. In this Review Petition, it is brought to our notice that suppressing the events that had taken place before this Court, the employee has obtained an order from the hands of this Court. Therefore a request is made to review the orders passed by this Court in W.A.No.1942 of 2007 on 17th August, 2007 and in R.P.No.985 of 2007 on 18th October, 2007.

9. We have heard Shri P.F. Thomas, the learned Senior Counsel for the Review Petitioner/employer and Shri Paulson C. Varghese , learned

counsel for the employee/1st respondent in this Review Petition.

10. The State Government had referred the points of dispute for adjudication by the Labour Court , pursuant to the first order passed by this court in O.P.No.15012 of 1998 dated 24.09.2002. On the request made by the learned counsel for the employer, the order passed by this Court on 24.09.2002 has been recalled. Therefore, the Labour Court could not have proceeded with the reference made by the State Government.

11. The above factual matrix was not brought to our notice by the learned counsel appearing for the employee when we disposed of the Writ Appeal No.1942 of 2007, which was filed against the orders passed in O.P.No.15012 of 1998 dated 27th April, 2007. Had it been brought to our notice, we do not think that we would have disposed of the appeal solely on the ground that during the pendency of the Original Petition, the State Government had already referred the lis between the parties to the Labour Court for adjudication.

12. The learned single Judge, after noticing the various contentions canvassed by the learned counsel, has in fact rejected the Original Petition. The correctness or otherwise of the said order requires to be considered by this court and therefore, Writ Appeal No.1942 of 2007 could not have been disposed of on the ground that the dispute had already been referred to the Labour Court for adjudication by the State Government.

13. In view of the above discussion, in our opinion, the Review Petition filed by the employer requires to be allowed and all our earlier orders ,

viz., orders in Writ Appeal No. 1942 of 2007 dated 17th August, 2007 and in Review Petition No.985 of 2007 dated 18th October, 2007 requires to be re-called. Accordingly, they are re-called.

14. Post Writ Appeal No. 1942 of 2007 for admission on 12.11.2007

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.